

Message

From: Hugh Barroll [Hugh Barroll <Ex. 6 PII, Hugh Barroll>]
Sent: 2/14/2013 2:59:15 PM
To: Thomas Yocom [Ex. 6 PII, Thomas Yocom]
CC: Palmer Hough/DC/USEPA/US@EPA
Subject: Re: State assumption of the 404 program in Alaska
Attachments: [Ex. 6 PII, Thomas Yocom] pebblewatch.com

The first thing that leaps to mind in State assumption, in general, is dealing with ESA. I know that the Arizona 402 assumption case changed the rules of the game, but EPA hasn't done a 404 assumption since then. I expect there would be plenty of opportunity for fun and games on that.

The second thing that comes to mind is resources. Most States lose their nerve when we tell them how limited to nonexistent Federal money is for 404 program implementation. Alaska has economic resources that other States could only dream of, so they might be able to cope with the money issue (or at least pretend).

What would be truly entertaining would be to see their commitments to the substance and process of a true 404 program. An Alaska program consistent with the 404(b)(1) Guidelines and the Mitigation Rule would be quite a sight, as would a program that met our needs for public input and judicial review.

If Alaska ever got past these hurdles, the real battles would be fought over the limitations on State programs.

The State would truly hate that it couldn't get jurisdiction over discharges to a navigable waters. A lot of resource development projects would have essential components that would still require Corps permitting.

It would hate even more EPA's permit oversight authority. I'd be willing to bet that Alaska would demand we surrender or drastically limit EPA permit oversight, and seek a CWA fix if/when EPA refused.

If this ever moves past the talking point stage, it will be fun.

P.S. I doubt they understand that EPA and the Corps would not consider themselves bound to erroneous JDs.

Sent from my iPad

On Feb 13, 2013, at 9:15 PM, Thomas Yocom [Ex. 6 PII, Thomas Yocom] wrote:

Dear Palmer:

Don't know if you have heard that the Alaska Governor is supporting state assumption of the 404 program. According to the pebblewatch.com website:

House Bill 78 and Senate Bill 27 would allow the state of Alaska to assume control of the 404 Wetlands permitting process, thereby bypassing federal NEPA requirements. As stated by the governor in his transmittal letter to the Legislature, "This change will limit federal overreach in Alaska by giving the State authority to make jurisdictional determinations, timely process permits, and allow responsible resource development. Removing a significant amount of wetlands from federal authority also reduces the number of projects requiring an expensive and time-consuming federal National Environmental Policy Act (NEPA) process, since there would be fewer 'major federal actions' associated with these projects."

I do not believe that the Governor understands the regulations, but it's been a long time since I reviewed state-assumption rules and regulations. I'm cc'ing the recently retired juris doctor Barroll, in case he wants to put in his several cents.

Anyway, FYI.

Tom Yocom

San Francisco, CA

cell: **Ex. 6 PII**